IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

C.R. No. 6534 of 2006 (O&M)

Date of Decision : 21.9.2007

Smt. Anita

.....Petitioner

Versus

Urmil Dhiman & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Subhash Ahuja, Advocate
for the petitioner.

Mr. Vijay Lath, Advocate with
Mr. Naveen Sharma, Advocate
for respondents No. 1 to 3.

Mr. Shiv Kumar, Advocate
for respondent No.4.

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VINOD K. SHARMA, J. (ORAL)

C.M. No. 9017-CII of 2007

For the reasons stated in the application, the order dated 30.4.2007 is recalled and the case is restored to its original number.

C.M. stands allowed.

C.R. No. 6534 of 2006

This revision petition has been filed against the order passed by the learned District Judge, Chandigarh vide which the appeal filed by the respondents against the order passed by the learned trial Court has been allowed.

The petitioner herein had filed an application for grant of succession certificate with respect to the estate of late Sh. Onkar Chand son of Zulfi Ram resident of Naya Nangal, Distt. Ropar, under the Indian Succession Act, 1925.

The petitioner claimed herself to be the wife of late Sh. Onkar Chand, who was stated to have died on 20.9.1999 at Noida. In the application the details of the moveable properties left behind by Onkar Chand were mentioned. The ex parte succession certificate was granted in favour of the petitioner on 4.4.2000.

On coming to know about the grant of succession certificate, the respondent before the learned trial Court filed an application under Order 9 Rule 13 of C.P.C. for setting aside ex parte decree/order of issuance of succession certificate read with Section 383 of Indian Succession Act for revocation of succession certificate already granted. The said application was dismissed. However, in appeal, the learned lower appellate Court came to the conclusion that the order passed by the learned trial Court was not sustainable firstly for the reason that without resorting to ordinary process or registered notice to the parties straightway service by way of publication was ordered.

The learned trial Court had erroneously ordered the service of the respondents by way of proclamation as it was obligation of the learned trial Court to have first serve the respondents by way of ordinary process/registered cover before ordering the publication. It seems that the learned trial Court adopted this method in the case of Succession Act, as publication is must for notice to General Public and, therefore, the ordinary process was given a go bye and the respondents were proceeded against ex

parte. It has also been observed that the minor's interest was also involved in the present case and, therefore, it was incumbent upon the trial Court to get the service of notice effected upon his natural guardian before proceeding ex parte against the minor. The Court also noticed that the notice through publication was not in accordance with law and consequently came to conclusion that no proper procedure was adopted for effecting service upon the respondents and set aside the ex parte proceedings as well as the grant of succession certificate.

The learned counsel for the petitioner vehemently argued that the impugned order cannot be sustained as a consolidated application was moved by the respondents i.e. one under Order 9 Rule 13 C.P.C. for setting aside the ex parte order as well as under Section 383 of the Indian Succession Act for revocation of succession certificate and once said application was dismissed it has to be presumed that the Succession Certificate was upheld and no appeal was competent.

The learned counsel for the petitioner vehemently contended that the impugned order cannot be sustained as in the appeal the petitioner had challenged the order rejecting his application under Order 9 Rule 13 as well as the order dismissing his application for revocation of the succession certificate but no mention has been made about revocation, therefore, it is deemed to have been rejected. This argument is totally misconceived and unwarranted for the reason that once the ex parte judgment has been set aside there remained no succession certificate.

The learned counsel for the petitioner had got the notice issued

by this Court by contending that the application under Order 9 Rule 13 C.P.C. was moved after the appeal was dismissed. The stand of the petitioner was wrong and misconceived as application under Order 9 Rule 13 C.P.C. was moved earlier and appeal was filed against order dismissing the said application. The order passed is in consonance with law.

No merit.

Dismissed.

21.9.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**